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Supreme Court, U.S.
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In The Supreme Court Of The United States

October Term, 1987

LAURA REAGIN,

Petitioner,

v.

CHARLES LAWRENCE TERRY and TROY VIRGIL TERRY, individually and d/b/a Mt. Hope Shell Service Station; MT. HOPE SHELL SERVICE STATION, a Partnership; EDWARD C. BRASINGTON; SHELL OIL COMPANY; QUALITY OIL COMPANY OF STATESVILLE, INC.; and QUALITY OIL COMPANY, a Limited Partnership

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below correctly determined that the plaintiff was not entitled to have her case submitted to a jury because, viewing the evidence at trial in the light most favorable to the plaintiff, the plaintiff failed to present sufficient evidence to warrant a jury finding that the asserted negligence of the defendants was a cause-in-fact of the plaintiff's injuries.

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OPINIONS BELOW

The opinions, judgments and orders of the United States District Court for the Middle District of North Carolina have not been reported and appear in the Appendix to the Petition (Pet. App. 1, 5, 58 and 60). The opinion of the United States Court of Appeals for the Fourth Circuit has not been reported and appears in the Appendix to the Petition (Pet. App. 45).

JURISDICTION

The judgment of the Court of Appeals was entered on August 26, 1987. A petition for rehearing was filed on September 9, 1987, and denied by order dated October 7, 1987. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

STATEMENT

(1) This matter arises out of a diversity action brought by the petitioner, Laura Reagin, to recover for damages and injuries she sustained when she was raped and kidnapped while she was on the premises of Mt. Hope Shell Service Station during the early morning hours of June 17, 1982. The respondents Charles and Troy Terry are the co-owners of defendant Mt. Hope Shell Service Station ("Mt. Hope Shell"), a partnership, and operate the independent service station and convenience store known as Mt. Hope Shell. Mt. Hope Shell is located in rural Guilford County, North Carolina, at the intersection of Interstate 85 and Mt. Hope Church Road. The respondents Quality Oil Company, a limited partnership, Quality Oil Company

of Statesville, Inc., and Shell Oil Company, market petroleum and related products and were named as defendants on various agency and apparent authority theories.

(2) Ms. Reagin was raped and kidnapped by one Lorenzo A. Woodward, an individual who, as of June 17, 1982, had a long criminal record (R 420) and who had been in prison until just a few days before June 17, 1982 (R 417, 420). During the evening hours of June 16, 1982, Woodward and two accomplices, William McDonald and Tommy Farrington, all of whom were from Durham, North Carolina, were in Greensboro, North Carolina, (R 412, 414). At about 2:30 a.m. on June 17 these individuals started back to Durham from Greensboro and were traveling on Interstate 85. Once they got on Interstate 85, but

before they came upon Mt. Hope Shell, Woodward announced that he wanted to "rob something" (R 414). Thereafter, upon seeing Mt. Hope Shell, Woodward demanded that McDonald and Farrington get off at the Mt. Hope Church Road exit. When this demand was refused, Woodward pulled a gun on McDonald and Farrington and forced them to drive up the exit ramp. When the vehicle got to Mt. Hope Church Road, but while it was still some distance from the station, Woodward got out of the vehicle and McDonald and Farrington drove off, back on to the interstate. Woodward approached the station on foot (R 413-418, 420, 438).

Edward C. Brasington was the third shift attendant on duty at Mt. Hope Shell during the early morning hours of June 17, 1982. Sometime between 2:30

and 3:00 a.m. Woodward entered the station and told Brasington that his automobile had transmission trouble and was disabled on the interstate. Woodward inquired about wrecker service and Brasington informed him that a wrecker driver would not be available without an extra $20.00 charge until 6:30 or 7:00 in the morning. Woodward told Brasington that he would wait until the morning to call a wrecker (R 15-20, 592-593, 607-610). It was not unusual for individuals to walk to the station from the interstate and report automobile trouble during the third shift; this happened as often as two or three times a week (R 23, 655, 727). Brasington testified that nothing about Woodward struck him as unusual and that Woodward acted just like a regular customer (A. 21-22, 594, 612). Woodward

chatted with Brasington about the trip he was supposedly on. Later, a route salesman arrived at the station. Woodward excused himself to go to the restroom on two or three occasions, complaining of stomach problems.

Subsequently, while Woodward was in the restroom, Brasington poured himself a cup of coffee and went to sit at a table located inside the station (R 595-596). While Brasington was seated at the table, Woodward approached, stuck a sawed-off shotgun or rifle in Brasington's side, and announced that he was holding up the station (R 595-596). Mr. Woodward then took from Brasington's pockets a billfold and a small .25 caliber pistol Brasington carried while on duty. At about this time, Brasington heard an automobile drive into the station and park.

Brasington then noticed, out of the corner of his eye, a person he thought to be a man enter the station and go to the restroom area.

Thereafter, Woodward emptied the cash register and forced Brasington, at gunpoint, to leave the station and go to an area towards the rear of the station on the north side of building. Brasington was then forced to climb a fence and proceed into a field behind the station. Woodward told Brasington to walk and to "hurry up or I'll blow your damned head off" (R 599). Brasington testified that he was certain he was about to be killed. When Brasington got to the edge of the field, near some woods, he stood there for sometime and then started back towards the station. Brasington was then again told that he would be killed if he did

not get out of there. Brasington, in an effort to get some help, walked through the woods and fields near the station, crossed New Hope Church Road, and went to the only residence in the area in an effort to obtain assistance and notify the police. Brasington was unsuccessful in arousing anybody at the residence.

Ms. Reagin, at the time Brasington and Woodward were standing by the table, entered the station and went directly to the restrooms. Ms. Reagin testified the station was well lighted.[1]

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[1] The evidence established that the interior and exterior of the station proper were well lighted. There were also five pole lights around the perimeter of the station premises. One of these pole lights was out. The evidence established that this light had gone out a day or so before the incident in question, that a repairman had been called but could not repair the light until a part was obtained, and that the part had been ordered but had not yet arrived.

Ms. Reagin further testified that she saw Brasington and Woodward at the table and specifically further testified that she noticed nothing out of the ordinary. When Ms. Reagin came out of the restroom she noticed two men outside the station, walking towards the north side of the station. Ms. Reagin poured herself a cup of coffee, got a bag of popcorn, and stood near the cash register, waiting to pay. Shortly thereafter, she heard a voice behind her state "turn out your pockets" (R 334, 360). Ms. Reagin turned around and saw Woodward holding a small silver gun at her head. Ms. Reagin gave Woodward the $2.00 or $3.00 she had in her pocket and a silver zippo lighter. Woodward then led Ms. Reagin out of the station and to the north side of the station, at the area where he had previously forced Brasington to climb

the fence. Woodward raped Ms. Reagin. While they were in this area a figure was seen off in the area beyond the fence. Ms. Reagin testified that she heard Woodward state "he's going to get himself killed" (R 336-337).

After perpetrating the rape, Woodward then, still holding Ms. Reagin at gunpoint, drove to Durham, North Carolina, in Ms. Reagin's car where he released Ms. Reagin (R 337-339). Ms. Reagin testified that she was terrified by Woodward and complied with his demands out of fear that she would certainly be killed if she resisted.

Based on an informant's tip of a planned robbery received by the Durham Police Department prior to June 17, Woodward was promptly arrested in Durham County on the afternoon of June 17. Woodward was eventually sentenced to 40

years in prison for the events which occurred at Mt. Hope Shell.

(3) At the conclusion of discovery, all respondents moved for summary judgment. Judge Frank W. Bullock, Jr., by Memorandum Opinion, Judgment and Order (Pet. App. 58, 60) denied summary judgment as to all respondents except Edward Brasington, as to whom summary judgment was granted. At trial, all respondents made appropriate motions for a directed verdict at the conclusion of the petitioner's evidence and at the conclusion of all evidence. All such motions were denied with the exception of the motions for a directed verdict made by Quality Oil Company of Statesville, Inc. and Quality Oil Company, a limited partnership, which motions were granted.

The case was submitted to the jury as to the respondents Charles Terry, Troy Terry, Mt. Hope Shell Service Station, and Shell Oil Company. The jury returned with a verdict against these respondents, awarding Ms. Reagin $450,000.00. These respondents made timely motions for judgment notwithstanding the verdict, or in the alternative, for a new trial. By Memorandum Opinion, Judgment and Order, the District Court granted the motions for judgment notwithstanding the verdict and directed that the verdict be set aside (Pet. App. 1, 5). On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the rulings of the District Court (Pet. App. 45).

ARGUMENT

The courts below correctly held that the plaintiff failed to present

sufficient evidence to warrant the submission of her case to the jury. No conflict between the circuits exists which would be determinative of the outcome of this case and this case presents no question which warrants further review by this Court.

1. The District Court, and the Fourth Circuit upon its independent review on appeal of the record in this case, correctly determined that the petitioner failed to present sufficient evidence on the critical issue of causation to warrant the submission of her negligence case to the jury.

The critical and undisputed facts pertaining to causation are as follows: (a) Woodward was a brutal, hardened and experienced criminal with a long record of criminal convictions, including violent crimes such as assault on a law

enforcement officer. The record established that Woodward had been released from prison only a few days prior to when he raped and kidnapped Ms. Reagin. (b) Woodward was possessed of the pre-determined intent to "rob something" prior to even knowing of the existence of Mt. Hope Shell. Woodward announced his intent to "rob something" to his acquaintances McDonald and Farrington, prior to coming upon the interstate exit where Mt. Hope Shell was located. Indeed, Woodward's prompt arrest was facilitated by the fact that the Durham Police Department had received an informant's tip of a planned robbery prior to the events at Mt. Hope Shell. (c) At the time, while still out on the interstate highway, when Woodward actually selected Mt. Hope Shell as a target for his planned armed robbery, he

knew nothing about the station other than that it existed and was open. (d) When Woodward left the automobile in which he was a passenger, while still out on the interstate exit ramp, Woodward, armed with a sawed-off rifle or shotgun and with an announced pre-disposition to commit a robbery, was alone at night in a rural area and was without transportation. As of this moment, the commission of a crime was inevitable. (e) The time Woodward spent at the station prior to actually commencing the robbery makes it clear that he would have been careful (and in fact was careful) to bide his time and make sure that he could perpetrate his crimes with the least possible chance of interference and the highest probability of success. In short, the undisputed facts in this case could lead a jury to

only one rational and reasonable inference with respect to causation: the injuries sustained by Ms. Reagin were caused by the happenstance that she arrived at Mt. Hope Shell at the same time Woodward was present at the station and nothing that the respondents did or failed to do was a "but for" or "substantial factor" cause of those injuries. On facts less persuasive than those present in this case, other courts have held, as a matter of law, that causation was not established. See, e.g., Noble v. Los Angeles Dodgers, Inc., 168 Cal.App.3d 912, 214 Cal. Rptr. 396 (1985) and Constance B. v. State, 178 Cal.App.3d 200, 223 Cal. Rptr. 645 (1986).

2. Petitioner argues that certiorari ought to issue in this case so that this Court can resolve the

conflict in the circuits on whether a state or federal standard applies to the determination of whether sufficient evidence has been presented to warrant the submission of an issue to a jury. While such a conflict does exist, that conflict has no bearing on the outcome of this case. The federal standard adopted by the Fourth Circuit and the standard which would have been applied had this case been decided in the North Carolina state courts, are identical.

As stated in its opinion, the Fourth Circuit (as did the District Court) applied the standard of reasonable probability to determine whether there was sufficient evidence to warrant the submission of the causation issue, i.e., whether from the evidence, taken in the light most favorable to the plaintiff, a jury could draw the

inference that it was reasonably probable that the alleged negligence of respondent was a "but for" or a "substantial factor" cause of the injuries suffered by the petitioner.[2] The Fourth Circuit's insistence that the inferences drawn by a jury must be reasonably probable before an issue can be submitted to the jury is set forth in numerous decisions. See, e.g.,

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[2] There are two aspects to causation, cause-in-fact and proximate causation. See Harper, James & Gray, The Law of Torts, Vol. 4, §§ 20.1 et seq. (2d Ed. 1986). Cause-in-fact deals with the factual question of whether the alleged negligence of the defendants was a "but for" or a "substantial factor" cause of the injuries sustained by the plaintiff. The proximate causation question only arises after cause-in-fact is established and pertains to the essentially legal question of whether the defendants' responsibility for the plaintiff's injuries will be cut off even though cause-in-fact exists. The causation question in this case deals solely with the cause-in-fact issue.

Fitzgerald v. Manning, 679 F.2d 341 (4th Cir. 1982); Owens by Owens v. Bourns, Inc., 766 F.2d 145 (4th Cir.) cert. denied 106 S.Ct. 608, 88 L.Ed.2d 586 (1985); Lovelace v. Sherwin-Williams Co., 681 F.2d 230 (4th Cir. 1982); Ralston Purina Co. v. Edmonds, 241 F.2d 164 (4th Cir. 1957); Ford Motor Co. v. McDavid, 259 F.2d 261 (4th Cir. 1958). The standard of reasonable probability, of course, is nothing more than an expression of the time honored requirement that the plaintiff prove the elements of a civil case by a preponderance of the evidence.

North Carolina likewise would use the reasonably probable standard to determine the sufficiency of evidence on causation. The standard which would have been applied had the case been tried in state court is best enunciated

in the recent decision of the North Carolina Court of Appeals in White v. Hunsinger, Slip. Op. (No. 873SC357, January 5, 1988). White involved a medical malpractice claim where it was alleged that the plaintiff's decedent died because of a delay in his being treated by a neurosurgeon. In response to a defense motion for summary judgment, the plaintiff submitted the affidavit of an expert which stated the opinion that, had the decedent been transferred to the care of the neurosurgeon at an earlier point in time, the decedent's chances of survival would have been increased. The Court held that this affidavit provided a sufficient forecast of the evidence to give rise to a jury question with respect to the negligence issue but failed to forecast sufficient evidence

on the causation issue. Hence, summary judgment in favor of the defendants was held proper. The Court stated:

> On the record before us, plaintiff has failed through affidavit or otherwise to forecast any evidence showing that had Dr. Hunsinger referred Bradley to a neurosurgeon when Bradley was first brought to the hospital, Bradley would not have died. The connection or causation between the negligence and death must be probable, not merely a remote possibility. Bridges v. Shelby Woman's Clinic, P.A., [72 N.C.App. 15, 323 S.E.2d 372 (1984), disc. rev. denied, 313 N.C. 596, 330 S.E.2d 605 (1985)] (Slip. Op. at 7-8).

See also Lockwood v. McCaskill, 262 N.C. 663, 138 S.E.2d 541 (1964); McHarias v. Weathers Brothers Moving & Storage, 257 N.C. 767, 127 S.E.2d 548 (1962); Lee v. Stevens, 251 N.C. 429, 111 S.E.2d 623 (1959); Garland v. Shull, 41 N.C.App. 143, 254 S.E.2d 221 (1979); Casison v.

Cliff, 38 N.C.App. 617, 248 S.E.2d 362 (1978).

3. The petitioner's reliance on this Court's decision in Lillie v. Thompson, 332 U.S. 459, 92 L.Ed. 73, 68 S.Ct. 140 (1947), is entirely misplaced. The decision in Lillie stands for the proposition that the fact that the plaintiff's injury was sustained as the result of criminal conduct by a third party did not alone deprive the plaintiff of a cause of action against the defendant. Put another way, the decision in Lillie holds that a defendant may be liable to a plaintiff for injuries sustained as a result of criminal activity of another if the facts alleged would permit a finding that the defendant was negligent and that the defendant's negligence was a cause of the plaintiff's injuries. The decision in

Lillie certainly does not stand for the proposition that, at trial, a plaintiff in a criminal activity case is relieved of the requirement that sufficient evidence on cause-in-fact be presented before the plaintiff is entitled to go to the jury.

4. In sum, the Fourth Circuit carefully and independently reviewed the record in this case (as did the trial judge) and determined, on the specific facts of this case, that the plaintiff failed to present sufficient evidence to permit a jury to draw a reasonable inference that the alleged negligence of the respondents was a "but for" or "substantial factor" cause-in-fact of the plaintiff's injuries. This holding was quite proper under the identical standards for determining the sufficiency of evidence utilized by both

the Fourth Circuit and the North Carolina state courts. No occasion is presented for this Court to further review this case.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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AFFIDAVIT OF FILING AND MAILING

I, Barbara E. Grove, being first duly sworn, deposes and says: On February 2, 1988, I filed with the Clerk's Office of the Supreme Court of the United States for the foregoing Petition for a Writ of Certiorari and Appendix to and further certify that I mailed this same date the required three copies via first-class mail to the opposing counsel listed below:

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TO WIT:

This day personally appeared before me, a notary public in and for the aforesaid jurisdiction, Barbara E. Grove, who made oath that the statements contained herein are true and accurate to the best of her information, knowledge and belief.

Given under my hand this 2nd day of February, 1988.

My Commission expires: June 9, 1991.

Notary